IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 136 of 2004

IN

COMPANY PETITION No 206 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAKRIBEN DAHYABHAI PATEL

Versus

O.L. OF SUNDEEP INDUSTRIES LTD

Appearance:

1. COMPANY APPLICATION No. 136 of 2004

MR NAVIN K PAHWA for Applicant.

OFFICIAL LIQUIDATOR for Respondent No. 1

MS POONAM MALHOTRA FOR SINGHI & CO for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 21/02/2005

ORAL JUDGEMENT

The applicants have taken out this Judge's Summons seeking declaration from this Court that the immovable properties consisting of Office No. 'B' admeasuring 268 Sq. Feet and also Office No. 'A' admeasuring 532 Sq. Feet both situated at First Floor, Sundeep House alias Megha Building or Complex (Navnil Association) on Final Plot No. 192 of 2 of T.P. Scheme No. 3 (varied) at Shaikhpur - Khanpur, Ahmedabad was and is of the sole ownership of the applicants and that the Company in Liquidation viz. M/s. Sundeep Industries Ltd. had or has absolutely no right, title or interest in the said property since the said Company had sold the said property to the applicant by Regd. Sale Deed dated 29.11.1996. The applicants have further prayed for the direction to the O.L. to remove the seals applied by him in respect of the above properties.

2. An affidavit in support of this Judge's Summons is filed by one Mr. Jagdish Patel, the Power of Attorney Holder of the applicant, namely, Smt. Sakriben Dahyabhai Patel. The Court has issued notice on 27.04.2004. The O.L. has filed his report dated 02.07.2004. Based on the said report, the Court has further passed an order on 27.07.2004 directing the applicant to join Secured Creditors as party - respondents in the present application.

3. On the basis of the objections raised by the O.L. in his report that other legal heirs of the deceased are not made co-applicants in the present application, the applicant has filed additional affidavit on 26.10.2004 stating that the other legal heirs of late Shri Dahyabhai Patel have given Certificates dated 12.08.2004 and 14.08.2004 in favour of the applicant to the effect that they have no objection if the property in question is handed over to the applicant or her power of attorney holder. Four such Certificates given by the legal heirs of deceased Dahyabhai Patel are annexed with the said affidavit.

4. The Court has further passed an order on 04.11.2004 directing the O.L. to ascertain as to whether any winding up petition against M/s. Sundeep Industries Limited has been presented on the date of execution of the Sale Deeds. The O.L. was not aware about filing of

any such winding up petition nor other parties to this proceedings are also aware about it. However, this Court (Coram :- K.A. Puj, J.) is aware about filing of such petition and hence, direction was issued to place Company Petition No. 147 of 1996 along with the present application. The said petition was filed by one M/s. Pig Lift & Shift on 30.07.1996 through its advocate Shri K.A. Puj, at the relevant time who is elevated as a Judge of this Court on 03.12.2001. However, the said petition was dismissed by this Court (Coram :- B.J. Shethna, J.) on 04.09.2002. The parties have no objection if the present application is heard and decided by this Court (Coram :- K.A. Puj, J.).

5. Heard Mr. N.K. Pahwa, learned advocate appearing for the applicants, the Official Liquidator for the Company in Liquidation and Ms. Poonam Malhotra, learned advocate appearing for Singhi & Co. for respondent No.2 i.e. ICICI Bank.

6. Mr. N.K. Pahwa has submitted that much before the winding up order was passed by this Court, the applicants have purchased the property in question from M/s. Sundeep Industries Limited for a valuable consideration of Rs. 1,70,000/- and Rs. 3,72,400/respectively and Regd. Sale Deeds were executed in favour of the applicants by the then Chairman of the respondent Company which is now under Liquidation. Mr. Pahwa has further submitted that before executing the Sale Deeds, the applicants have arranged an inspection by M/s. R. Thomas and Associates, Chartered Accountants, who issued their certificate dated 01.11.1996 listing various charges created by the Company over its assets. The Search Report so given by the Chartered Accountant does not indicate that there was any charge over the properties purchased by the applicant and it was absolutely free from any encumbrance. The applicants have inspected the records of the Company maintained in the office of Registrar of Companies and no charge was shown even in the records of Registrar of Companies. The then Chairman, Shri S.L. Yadav of the Company has sworn an affidavit to the effect that the property in question was free from any encumbrance. The applicants had no knowledge or there was no reason to believe that there was any charge or encumbrance over the properties in question. The applicants are the bonafide purchaser for valuable consideration and without any notice whatsoever. On the date of Sale Deed dated 29.11.1996, the Company had a perfect and unimpeachable title over the property

and its Chairman was duly authorised to execute the Sale Deed in favour of the applicants.

7. Mr. Pahwa has further submitted that for the adjoining office of the same premises, two Company Applications bearing Nos. 199 of 2003 and 200 of 2003 were filed by the purchasers before this Court and this Court (Coram :- R.R. Tripathi, J.) vide its order dated 28.04.2003 has directed the O.L. to remove the seals applied on the said two premises and restored the possession to the applicants. It is, therefore, submitted that similar order should be passed in this application also and the O.L. may be directed to remove the seals and hand over the possession of the premises in question to the applicants.

8. The O.L. in his report filed on 22.07.2004 has submitted that he has prayed for ratification of his action of taking possession of the premises in question in O.L.R. No. 10 of 2003 and this Court vide its order dated 28.04.2003 has granted the said prayer and ratified his action. The O.L. has further submitted that the Ex-Directors of the Company in Liquidation have not submitted Statement of Affairs and hence, the Official Liquidator has filed Criminal complaint being Criminal Case No. 01 of 2003 against the Ex-Directors. In other Company Applications No. 199 of 2003 and 200 of 2003, the applicants in those applications have produced an affidavit of Shri S.L. Yadav, the then Chairman of the Company in liquidation. The present applicants have also produced similar affidavit of Shri S.L. Yadav. He has, therefore, submitted that there appears to be some link between the then Chairman and the applicants. He has taken over the possession of the premises in question on 04.12.2002 whereas the present application is filed by the applicants in the year 2004 i.e. after lapse of about 2 years and the delay has not been explained by the applicants. On the basis of his report, he has submitted that the application may not be entertained by this Court.

9. Ms. Poonam Malhotra, learned advocate appearing for ICICI has submitted that the premises in question were sold to the applicants and Sale Deeds were executed on 29.11.1996. The winding up petition against the Company in liquidation was filed before this Court on 30.07.1996. In view of the provisions contained in Section 536 (2) of the Companies Act, 1956 which says

that "in the case of a winding up by or subject to the supervision of the Court, any disposition of the property (including actionable claims) of the Company, and any transfer of shares in the Company or alteration in the status of its members, made after commencement of the winding up, shall, unless the Court otherwise orders, devoid. She has further submitted that the winding up proceedings are deemed to have been commenced on the date when the winding up petition is filed before the Court. Since the property in question was transferred to the applicant by the then Chairman of the Company after the commencement of the winding up proceedings against the Company, the said disposition of the property is void and this Court should not entertain the present application moved by the applicants.

10. After having heard learned advocates appearing for the respective parties and the Official Liquidator, the Court is of the view that the applicants have bonafide purchased the properties for valuable consideration and without any notice to the effect that the winding up petition was filed against the Company. Before purchasing the properties, the applicants have taken all necessary precautions by taking Search report from the office of the Registrar of Companies in respect of the assets of the Company and there was nothing on the record of the Company maintained by the Registrar of Companies that the properties in question were charged or incumbered. The then Chairman of the Company has also filed an affidavit to the effect that there was no charge or encumbrance over the properties in question of the Company. There was no reference either in the said affidavit or in the record maintained in the office of the Registrar of Companies showing that the winding up petition was filed against the Company. There is nothing on record to suggest that the properties sold to the applicants are under valued or that the applicants are in any way related to the Chairman or any other Directors of the Company. It is also an important factor that under similar circumstances, this Court has already allowed the application in respect of the adjoining property, directing the Official Liquidator to remove the seals and restore the possession to the purchasers.

11. It is also important to note that the winding up petition filed in July 1996 was ultimately dismissed by this Court on 04.09.2002. However, during the pendency of the said petition, the Company was before B.I.F.R. and pursuant to the opinion formed by B.I.F.R., the

Company was ordered to be wound up by an order passed in Company Petition No. 206 of 2001. Hence, winding up order relates back to the date of registration of Company Petition No. 206 of 2001. Even if it is assumed that the Provisions of Section 536 of the Companies Act 1956 are applicable to the present transaction, the circumstances are such that the Court may not be inclined to take the view that the transaction is void. Even in Section 536 (2) of the Act, the discretion is left to the Court. The transaction would be void unless the Court otherwise orders. Here in the present case, looking to the circumstances enumerated hereinabove, one would hardly be convinced that the transactions were entered into with an oblique motive to defeat the winding up proceedings or to fraudulently transfer the properties of the Company without any valuable consideration. The applicants being genuine and bonafide purchasers and they have purchased the property with valuable consideration, they cannot be deprived of the lawful possession and enjoyment of the properties in question. The purchase of properties in question by the applicants, therefore, can not be and should not be held to be void within the meaning of Section 536 (2) of the Act.

12. In view of the aforesaid facts and circumstances and in view of the above observations, the Official Liquidator is hereby directed to remove the seals on the properties applied by him forthwith and restore the possession thereof to the applicants.

13. With this direction, this application is allowed without any order as to costs.

Sd/-

[K.A. PUJ, J.]

#Savariya#

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